GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 15265 of Steven and Roberta Pieczenik, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Hampton Cross, Administrator, Building and Land Regulation Administration of the Department of Consumer and Regulatory Affairs, made on December 21, 1989, to the effect that the Certificates of Occupancy for the Kalorama Guest House (Nos. B129524, B150053, B141109 and B137823) should be revoked for a rooming house in an R-5-B District at premises 1831, 1852, 1854 and 1859 Mintwood Place, N.W., (Square 2250, Lots 153 and 154, and Square 2549, Lots 109 and 806).

HEARING DATE: March 28, 1990
DECISION DATE: May 2, 1990

FINDINGS OF FACT:

1. The properties that are the subject of this appeal are known as premises 1831, 1852, 1854 and 1859 Mintwood Place, N.W. They are located in an R-5-B zone in the Adams-Morgan area of the city. These properties are owned by the appellants.

2. In 1980, the appellants purchased the property located at 1854 Mintwood Place, N.W. (Square 2550, Lot 153). It is developed with a 3-story plus basement brick structure. The structure contains six units and has been used as a tenement house and as a rooming house.

3. The appellants purchased the remaining properties between 1983 and 1986.

4. The property located at 1852 Mintwood Place (Square 2550, Lot 154) is developed with a 3-story with basement brick structure. The structure contains six units and it was previously used as an apartment house.

5. A 4-story with basement brick structure is located at 1859 Mintwood Place (Square 2549, Lot 806). There are five units in this facility which has been used as a tenement house, a rooming house and an apartment house.

6. At 1831 Mintwood Place (Square 2549, Lot 169) there is a brick structure containing eight units, three stories and a basement. In prior years this structure was used as a tenement house.

7. In 1981 the appellant, Mrs. Pieczenik, researched the laws and regulations applicable to the property on Mintwood Place. She discussed the appropriate use category with the Zoning Administrator's Office. She informed the official of the nature of

the proposed operation, which was to provide short-term housing accommodations. The Zoning Administrator indicated to her that the appropriate category would be a "rooming house." The appellants then applied for a rooming house Certificate of Occupancy for 1854 Mintwood Place property. On May 11, 1982, Certificate of Occupancy No. B129524 was issued for a rooming house use with 6 units covering all three floors and the basement.

8. The applicants subsequently applied for and received rooming house Certificates of Occupancy for the other properties as follows:

- 1859 Mintwood Place - Certificate of Occupancy No. B137823 dated February 22, 1984;

- 1852 Mintwood Place - Certificate of Occupancy No. B141109 dated January 29, 1985;

- 1831 Mintwood Place - Certificate of Occupancy No. B150053 dated June 17, 1987.

9. After receiving Certificates of Occupancy on the properties, the appellants began operating the facilities which they refer to collectively as the Kalorama Guest House.

10. Around 1978 a number of city residents began to complain to their Councilmembers about the proliferation of inns in residential districts and the negative impact that they have on these neighborhoods.

11. In September of 1987, at the request of Councilmember John Ray, Chairman of the Committee on Consumer and Regulatory Affairs, the Department of Consumer and Regulatory Affairs (DCRA) conducted a regulatory survey of bed and breakfast facilities in the District of Columbia. They were compared with rooming and boarding houses located in the city.

12. The survey team consisted of inspectors in the following fields: food, zoning, housing, electrial and construction. There was also an Office of Compliance (OCOM) investigator.

13. During the survey the investigator was informed by the manger of the Kalorama Guest House that guests stay from one to three days, and that pastries and coffee are served to the guests.

14. Based on the information and data compiled during the regulatory survey regarding the average length of stay of guests at the Kalorama Guest House, which was determined to be two days, the rental of rooms on a daily basis, and the fact that guests were provided with a continental breakfast, DCRA determined that the Kalorama Guest House was operating as an inn, as opposed to a

rooming house.

15. After consulting with zoning officials at DCRA, Diana Haines, Chief of the Office of Compliance, under whose guidance the 1987 regulatory survey was conducted, determined that, pursuant to a Zoning Commission's ruling, inns could not operate in residential areas after May 16, 1980.

16. Responding to the concerns raised about inns in residential districts, the Zoning Commission held hearings in February of 1988 on the issues of home occupations and transient accommodations. At these hearings, DCRA presented the information gathered in their bed and breakfast survey.

17. In March 1988, Ms. Haines directed the appellants, as well as other owners of bed and breakfast establishments, to attend a compliance meeting with DCRA. The meeting was held in April 1988.

18. The appellants were directed to bring to the compliance meeting information about any licenses that they possessed with respect to their business, any Certificates of Occupancy, tax information, and any communications they had had with DCRA about how they determined that their business was a rooming house.

19. In a letter dated June 7, 1988, Ms. Haines notified the appellants that, as a result of the inspections conducted by DCRA in March 1988, and information that had been provided to DCRA by the appellants or its representatives, DCRA had determined that the appellants were operating inns as defined by 11 DCMR 199, and therefore, were in violation of 11 DCMR 3203.1 for operating without proper Certificates of Occupancy. Further, the appellants were directed to obtain Certificates of Occupancy for inns within two (2) weeks of receiving the letter dated June 7, 1988.

20. In September 1988, Ms Haines met with Hampton Cross, Administrator of the Building and Land Regulation Administration (BLRA), Patricia Montgomery, Assistant Administrator of the BLRA, Joseph Bottner, Zoning Administrator, Paul Waters, Enforcement Officer at the Office of Compliance, and Jonathan Farmer, an attorney representing the appellants, to discuss enforcement action that DCRA would take concerning the bed and breakfast establishments that were operating without Certificates of Occupancy for inns in the District.

21. At the September 1988 meeting, the appellants' attorney requested that DCRA hold in abeyance any enforcement actions against the bed and breakfast facilities pending publication of the Zoning Commission's final rules on transient occupancies. Considering this a reasonable request, DCRA agreed not to take any enforcement action pending publication of these rules.

22. Because the Zoning Commission had not published final rules regarding transient occupancies by October 1989, DCRA moved to revoke the Certificates of Occupancy of 1831, 1852, 1854, and 1859 Mintwood Place, N.W.

23. Before taking action on October 26, 1989 to revoke the Certificates of Occupancy for the subject premises, DCRA checked its records to ascertain whether the appellants had applid for Certificates of Occupancy as inns or had applied for variances with the Board of Zoning Adjustment. They had done neither.

24. On January 5, 1990, the appellants filed this appeal with the Board of Zoning Adjustment. The appellants maintain that to revoke their certificates would be an error because their use complies with the "rooming house" use as that term was defined when the occupancy permits were applied for and issued. The public hearing was set for March 28, 1990.

25. On March 26, 1990, DCRA conducted a rooming house survey. The Kalorama Guest House was inspected again. The inspection revealed that there was a dining room at 1854 Mintwood Place and that guests at 1831, 1852 and 1859 Mintwood Place were referred to 1854 Mintwood Place for a continental breakfast.

26. Based on the description of the premises provided by the zoning inspector, and applying the definitions in the Zoning Regulations that were in effect in the District of Columbia prior to November 1989, the Zoning Administrator conclusively determined that the premises at 1831, 1852, 1854 and 1859 Mintwood Place, N.W., were not being operated as rooming houses, but were being operated as inns.

27. On November 3, 1989, Zoning Commission Order No. 611 (Case No. 87-31) on Transient Accommodations became effective. The The new regulations more clearly delineate the guidelines for determing whether a rooming house or inn use is being made of a piece of property.

28. In their Motion to Dismiss the proposed action, the appellants maintained that the pre-1989 regulations govern their facilities and that no aspect of their operations exceeds the scope of the definition of rooming house. Therefore, they assert, their facilities operate pursuant to validly issued Certificates of Occupancy.

29. The District of Columbia government, argued, on the other hand, that the actual use of the facilities is more consistent with the inn definition than with the rooming house definition because lodging is provided for transients and continental breakfasts are served. It was maintained that the appellants knew that they intended to use the property in this manner but they chose the

rooming house label because rooming houses are allowed in the R-5-B zone. Inns are not.

30. The appellants also maintained that the government is estopped from revoking their Certificates of Occupancy.

31. The elements of estoppel, as set forth in Goto v. District of Columbia Board of Zoning Adjustment, D.C. App., 423 A.2d 917, 925 n.15 (1980), are as follows:

> (1) Actions taken by petitioner in good faith, (2) some affirmative response by the District, (3) that petitioner made expensive and permanent improvements in reliance, and (4) that the equities are strongly in petitioner's favor.

32. The appellants assert that they exercised good faith when they applied for the Certificates of Occupancy. They researched the laws and regulations and consulted with the appropriate officials. They maintain that they were informed by an official in the Zoning Administrator's Office that a rooming house Certificate of Occupancy should be sought. Relying on this advice, the appellants applied for and received rooming house Certificates of Occupancy for each of the four properties. Permanent improvements were subsequently made in excess of $1,000.000. They maintain that the equities are strongly in their favor because they have been in compliance with their occupancy permits for over eight years and their property rights have vested.

33. The government, in opposing this argument, stated that there is no proof that the Zoning Administrator's Office gave the assurances alleged; that improvements made to the properties are irrelevant if the use is in violation of the law, that the purpose of Zoning Regulations is to control the use of land so as to serve the public health, safety, morals and general welfare; and that the District of Columbia government has a duty to vigorously enforce those laws.

34. The Board finds that, while the Zoning Administrator is likely to have suggested that the appellants apply for a rooming house Certificate of Occupancy, he was not made fully aware of all of the details of the appellants' proposed use. The most appropriate category was, therefore, not recommended. The Board also finds, based on testimony of Mrs. Pieczenik, that the appellants sought to have the proposed use in the residential district under whatever category would legally allow it.

35. The Board agrees with the government about the purpose of the Zoning Regulations and the government's duty to enforce them.

36. Finally, it is argued by the appellants that the doctrine of laches bars the revocation. The doctrine of laches is defined

as "the ommission to assert a right for an unreasonable and unsatisfactorily explained lenth of time under circumstances prejudicial to the party asserting laches." Weick v. D.C. Board of Zoning Adjustment, 385 A.2d 7, 11 (D.C. Ct. of App. 1978).

37. The appellants noted that their first Certificate of Occupancy was issued in May 1982 and that the Kalorama Guest House opened in June 1982. They assert that DCRA was aware of the issues concerning bed and breakfasts in 1987 when the survey was conducted. Because the government did not inform the appellants of its intent to revoke the Certificates of Occupancy until 1989, the appellants argue that the government waited an unreasonable period of time without giving an explanation for the delay. The appellants maintain that the delay of approximately two and a half years was prejudicial to them.

38. The government stated that it became aware of the violation in 1987 and the appellants were given an opportunity to come into compliance. It was the appellants' attorney who requested that the government delay futher action until the Zoning Commission's new rules were published. It cannot be argued that the government caused the delay.

39. The Board finds that DCRA became aware of the actual use of the Kalorama Guest House in September of 1987 and that the appellants were informed in March of 1988 of the possible problems with their occupancy permits. In June of 1988 they were informed that failure to comply with the law would subject them civil to and/or criminal prosecution. The Board finds that the period between September 1987 and June 1988 is not an unreasonable length of time. The delay between the compliance meeting in April 1988 and issuance of the Notice of Proposed Revoation in October 1989 was caused by the appellants' attorney who requested that final action be held in abeyance in anticipation of the Zoning Commission Order. No evidence has been presented demonstrating prejudice to the appellants between September 1987 and June 1988.

40. In testimony at the hearing the appellants maintained that none of the activities or uses conducted on their premises were prohibited in the rooming house definition. The government pointed out, however, that these activities and uses more accurately correspond with the "inn" definition than the "rooming house" definition. The Board agrees with the view of the government.

41. The Kalorama Citizens Association (KCA) requested that it be permitted to intervene in the subject appeal on behalf of owners of property within 200 feet of the site. The Board allowed the intervention.

42. KCA opposed the appeal and requested that it be denied.

Through testimony at the hearing and written statements submitted to the Board, the Association indicated that some of the properties had intervening single-family uses. There were no rooming house uses, therefore, the appellants do not enjoy grandfather rights. KCA argued that the appellants were in violation of the Anti-Conversion law which makes it unlawful to convert residential units into transient accommodations. The further arguements of the KCA paralleled those of the government. The Association stated that the premises are more accurately used as an inn rather than a rooming house, according to pre-1989 definitions. A number of documents were submitted demonstrating that the appellants advertised and held themselves out as an inn operation to serve short term guests. The Association further argued that the government is not estopped from revoking the Certificates of Occupancy, nor is the doctrine of laches a bar. The Board agrees with the position of the Kalarama Citizens Association.

43. By letter dated March 21, 1990, Advisory Neighborhood Commission (ANC) 1C expressed the position that the Certificates of occupancy should be revoked. By resolution adopted March 7, 1990, ANC 1C noted that for the past ten years it has reviewed the issues arising from the operation of bed and breakfast establishments in residential zones. The ANC observed that such operations cause the following problems:

- They increase noise and distrubance to neighbors;
- deprive residents of public parking;
- create additional trash with attendant trash disposal problems;
- increase traffic on residential streets, both automobile and service supply vehicles, private and commercial;
- artificailly inflate property values;
- reduce the availability of residential housing; and
- unlawfully and unfairly compete with similar businesses in commercial zones.

ANC 1C concluded, therefore, that it is an inappropriate use, that there is no justifiable reason for a zoning adjustment and the appeal should be denied.

44. The Board appreciates the conerns of the ANC 1C which address the inappropriateness of this commercial use in residential areas. However, because the ANC's concerns do not address the definitional issues raised in this appeal, the Board does not base its decision on the position of ANC 1C.

45. A representative of the Residential Action Coalition testified in opposition to the appeal. She indicated that property owners should be required to comply with the Zoning Regulations and anti-conversion laws, that the city and citizens acted in a timely fashion to prevent the continuation of unlawful uses and that there is a great concern over the loss of housing stock in the District of Columbia.

46. The Ward One Council, by letter dated March 28, 1990, expressed its opposition to the appeal. The association expressed support for the efforts of the government in enforcing the Zoning Regulations and protecting residential areas from non-residential uses.

47. Councilmembers John Ray, Chairman of the Committee on Consumer and Regulatory Affairs, Betty Anne Kane, at-large Member, and Frank Smith, Ward One Representative, testified in favor of the revocation. They expressed concern over the message that will be conveyed if property owners are permitted to circumvent the regulations. The Council Members urged the Board to assist the government in its attempt to protect the housing stock in the city. The requested that the appeal be denied.

48. Four neighbors testified in opposition to the appeal. They expressed concern about the loss of residential property; the presence of strangers because of the transient use; the increase in congestion and activity on Mintwood Place; and the decline in the quality of life in the area because of the inns.

49. No one testified in support of the appeal.

50. Sixteen letters of support were received into the record. These letters mainly expressed the need for the Kalarama Guest House and the fact that the facilities are unobtrusive. Supporters also indicated that they like the diversity that is characteristic of the Adams-Morgan area.

51. The Board finds that while the appellants' facility might provide a valuable service, the use must nonetheless be in accord with the Zoning Regulations.

52. Three letters were submitted in opposition to the application. These letters primarily echo the opposing views previously set forth.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the Zoning Administrator did not err in deciding to revoke the rooming house Certificates of

Occupancy on premises 1831, 1852, 1854 and 1859 Mintwood Place, N.W.

When the appellant applied for the Certificate of Occupancy, "rooming house" was defined in the Zoning Regulations as follows:

> Rooming House - A building or part of a building, other than a motel, hotel, or private club, that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the operator or manager, and when the accommodations are not under the exclusive control of the occupants.

Section 199.9 of the Zoning Regulations also contained the following definition of "inn".

> Inn - A building or part of a building in which habitable rooms or suites are reserved exclusively for transient guests who rent these rooms or suites on a daily basis. Guest rooms or suites may include kitchens, but central dining other than continental breakfast for guests is not allowed. Commercial adjuncts, function rooms, and exhibit space as permitted in hotels are not allowed. The term "inn" shall not be interpreted to mean motel, hotel, private club, or apartment house.

The Board concludes that the appellants had the responsibility of applying for the Certificate of Occupancy that most accurately described the intended use. The Board further concludes that when a Certificate of Occupancy is inconsistent with the actual use of the property, the owner is in violation of the Zoning Regulations.

It is the opinion of the Board that the actual use of the subject premises is best described as an "inn" as that term was defined in the Zoning Regulations when the appellants applied for the Certificates of Occupancy. It is, therefore, unnecessary to apply the new definition of "inn" retroactively.

The Board concludes that the rooming house Certificates of Occupancy are inconsistent with the actual use of the premises and, as such should be revoked.

The Board concludes that the defenses of estoppel and laches are inapplicable.

The Board concludes that it has considered the views and concerns expressed by ANC 1C under the "great weight" statute.

In light of the foregoing, it is hereby ORDERED that the appeal is DENIED.

VOTE: 3-1 (John G. Parsons, William F. McIntosh and Charles R. Norris to deny; Carrie L. Thornhill opposed to the motion; Paula L. Jewell abstaining).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Edward L Curry
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 22 1991

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15265Order/TWR/BHS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 15265

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 22 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Edward Donahue, Esquire
Jonathan Farmers, Esquire
Wilkes Artis Hedrick and Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Mr. & Mrs. Steven Pieczenik
4731 Essex Avenue
Chevy Chase, Maryland 20815

Kathryn A. Eckles
1524 T Street, N.W.
Washington, D.C. 20009

James Harmon, Esquire
Assistant Corporation Counsel
450 - 5th Street, N.W.
8th Floor
Washington, D.C. 20001

Jeffrey Stauffer
1856 Mintwood Place, N.W., #3
Washington, D.C. 20009

George Frain
1789 Lanier Place, N.W.
Washington, D.C. 20009

Robert Ellsworth
1837 Mintwood Place, N.W.
Washington, D.C. 20009

L. Louise Hess Altes
1869 Mintwood Place, N.W.
Washington, D.C. 20009

Grace Malakoff, Chairperson
Advisory Neighborhood Commission 1C
2409 - 18th Street, N.W.
Washington, D.C. 20009

EDWARD L. CURRY
Executive Director

DATE: FEB 22 1991

ATTESTAT/BHS